



City of Chicago

Committee on Finance

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Alderman Edward M. Burke
Chairman

Telephone
312-744-3380

April 19, 2007

Mara S. Georges, Esq.
Corporation Counsel
Department of Law
121 N. LaSalle, Room 600
Chicago, IL 60602

Dear Ms. Georges,

I have your letter dated April 12, 2007 regarding the City's contract with Redflex Traffic Systems, Inc. ("Redflex"). You assert that the Digital Automated Red Light Enforcement Program ("DARLEP") contract is "not adapted to competitive bidding." Several factors render that position indefensible. One is that there were five substantive responses to the 2003 Request for Proposals ("RFP"), which negates an assessment that a contract for this project is not adaptable to competitive bidding. Another is that an RFP will be issued for a future phase of the project, a plan related to me by the Budget Director, the Chief Procurement Officer ("CPO"), and the Acting Executive Director of the Office of Emergency Communications ("OEMC"). Moreover, the Sole Source Review Board denied a petition to justify non-competitive procurement in this case when it was presented in 2006. Therefore, as a practical matter, your position is incongruent with how this process has unfolded.

To address your legal analysis, it remains that installing and operating cameras at traffic light intersections are not the type of services that would exempt a contract from competitive procurement requirements. While I am not privy to the Sole Source Review Board's reasoning in not recommending that the DARLEP program contract be exempted from competitive procurement, its conclusion is well within applicable legal standards. The exception you cite exists for contracts not adapted to competitive bidding, such as those for services of individuals "possessing a high degree of professional skill where the ability or fitness of the individual plays an important part...." (65 ILCS 5/8-10-4.) This is "necessarily a fact-driven inquiry" to determine whether the contracts "require a *recognized* professional and special expertise...." *Shively v. Belleville Township High Sch. Dist. No. 201 et al.*, 329 Ill. App. 3d 1156, 1164 (2002) (emphasis added). Courts find that "[w]here the services require the exercise of professional and significant business *judgment* in providing important services on behalf of the government body,

then the award of those contracts is exempt from the competitive bidding process pursuant to the relevant professional-services exception." *Id.* at 1163 (emphasis added).

Although you correctly indicate that the vendor selected for the DARLEP project is expected to execute the job in a competent, trustworthy, and timely manner, the same is expected of all City vendors and this does not mean that they possess a "high degree of professional skill" for which a contract is not adaptable to bidding. The City's operating departments are charged with exercising their professional and business skills and judgment in determining the nature, extent, and scope of the DARLEP program, not Redflex. Redflex serves as an installer and operator for a system that serves as one of many tools used to enforce traffic laws. In *Hassett Storage Warehouse v. Bd. of Elections*, 387 N.E.2D 785 (Ill. App. 1 Dist. 1979), the case you cite in support of your opinion, the vendor was the primary party responsible for ensuring an effective and legitimate election. The camera system is a new and limited-use tool that is not the City's sole or essential means of enforcing traffic laws. You also note that the Court in *Hassett* cited the need for "perfect performance under extreme time pressures" in justifying non-competitive procurement for a contract to store and deliver election machinery. Those demands were placed on the vendor, not the machinery. You point to no evidence that Redflex as a vendor is subject to similar rigors. Your analysis centers on the importance of having the *cameras* take the right picture at the right time. Presumably, the other RFP respondents felt that they could provide working cameras. The analogy therefore fails to show that this is a contract that, by "nature," is "not adapted to award by competitive bidding."

Ultimately, you respond to my concern that open and competitive procurement has not been conducted in this matter with an assertion that such procurement is not required and a conclusion that all contracts that have resulted are "lawful." To begin to support such an assertion and conclusion, you still have to explain or reconcile at least the following points:

- After the first two contract "modifications," the Sole Source Review Board denied a recommendation to justify non-competitive procurement in 2006. You fail to reveal any fault with the Board's findings or any evidence in support of deviating from them.
- The CPO has the authority to override such a recommendation and she did, only to rescind it. She then went on to support issuing an RFP going forward.
- A request for proposals that garnered seven bids, five of which were responsive, can hardly be characterized as one for a contract that is not adaptable to competitive bidding.
- You state that you approved the original contract as to form and legality after having concurred with the CPO that it was not subject to competitive procurement. That contract, however, was competitively procured with an RFP that, as noted, garnered five responsive bids. Moreover, it is not my understanding that the CPO's position is that the contract should not be competitively procured.
- You indicate that you similarly approved subsequent contract amendments but all three "modifications" bear the words "not required" where an assistant corporation counsel's signature should appear to show that it was "approved as to form and legality."

As indicated above, I have been advised that the other City departments involved will proceed with a competitive procurement process. One remaining concern is that the ability to issue a fair RFP for further expansion of the DARLEP project has been compromised by the vast expansion

already undertaken pursuant to the Redflex contract extensions that were the subject of my February letter to you. The Acting Executive Director of OEMC as well as the Budget Director have informed me that a consultant will be retained in order to fashion an RFP that is fair to all prospective bidders in light of Redflex's already extensive involvement in the project.

Regrettably, your reply to my February letter does not dispel any concerns regarding the procurement process in this case. I am heartened only by the information that the City is committed to ensuring an open and competitive process from this point forward and that it will re-issue a request for proposals or bids as soon as practicable. It is imperative that this occur because although, as you mention, black letter law demands a "narrow" construction of competitive bidding statutes, public trust demands the utmost adherence to their underlying principles of fairness and transparency. Questions about whether these principles have been upheld merit more than the cursory responses I have received; the concerns are of such gravity that they do not fall short of meriting a more formal, public inquiry when other measures fail to elicit a substantive response.

Very truly yours,



Edward M. Burke

Cc: Ms. Barbara Lumpkin
Mr. Paul Volpe